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EXAMINER

KARPINSKI, LUKE E

ART UNIT	PAPER NUMBER
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1616

NOTIFICATION DATE	DELIVERY MODE
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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/824,203	Applicant(s) YAQUB ET AL.	
	Examiner LUKE E. KARPINSKI	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 17-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/01/2010 has been entered.

Claims

Claims 9, 14, and 38 are amended.

Claims 15, 16, 40, and 41 are canceled.

Claims 1-14 and 17-39 are pending and under consideration in this action.

Rejections/Objections

Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Objections

Claim 5 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper

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dependent form, or rewrite the claim(s) in independent form. Claim 5 recites an amphoteric surfactant is added to the composition of claim 9, however, amended claim 9 now comprises an amphoteric surfactant.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 37 and 39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Neither the specification nor the claims as originally filed recite any language to give support to a claim of at least 80 psi or more. This is a new matter rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Applicant Claims
2. Determining the scope and contents of the prior art.
3. Ascertaining the differences between the prior art and the claims at issue, and resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-14 and 17-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,772,427 to Dawson et al. in view of International Patent Publication WO/1997/03646 to Hall et al., US Patent 4,651,503 to Anderson III et al., and US Patent 4,405,489 to Sisbarro.

Applicant Claims

Applicant claims a method for manufacture of a post-foaming composition, comprising adding a gelling agent to a mixture comprising an anionic surfactant and an

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amphoteric surfactant in an amount to achieve a 4:1 ratio with said gelling agent, combining said mixture with a post-foaming agent, and filling packages with said mixture prior to gel formation. Applicant also claims said gel forming at least 4 minutes after the addition of said post-foaming agent, said gel structure being stable for 12 months, the gel structure only formed at least 4 minutes after addition of the post foaming agent, and said mixture packaged into final containers prior to gel formation.

Applicant further claims specific gel agents, including laureth-4, a percentage range for said gel agent, said amphoteric surfactant as cocamidopropyl betaine and a percentages thereof, a saturated aliphatic hydrocarbon, a percentage range for said post-foaming agent, the gel rigidity remaining unchanged for at least 10 minutes after addition of the post-foaming agent, and the method of claim 9, wherein said steps are preformed through plant pipe work and absent an applied pressure of at least 80psi.

Determination of the Scope and Content of the Prior Art (MPEP §2141.01)

Dawson et al. teach methods of making post-foaming gel compositions (col. 8, line 53 to col. 9, line 2), comprising anionic surfactants (abstract), an anionic surfactant to non-ionic gelling agent of 4:1 or greater (abstract), filling said mixtures into packaging prior to gel formation (col. 8, line 61 to col. 9, line 19), said gel forming up to 24 hours after the addition of the post foaming agent (col. 8, line 61 to col. 9, line 19), and filling said compositions into the final container prior to gelling (col. 8, line 61 to col. 9, line 19), as claimed in claim 9.

Dawson et al. further teach polyoxyethylene (4) lauryl alcohol, also known as Brij 30 and laureth-4, (col. 4, lines 49-65) as claimed in claims 1-3 and 11, 7% of a gelling agent present, which reads on 0.01-8% (col. 10, examples 9 and 10), as claimed in claims 4, 12, and 13, 0.01-30% surfactant present (col. 10, examples 3 and 4), as claimed in claims 6 and 17-19, a saturated aliphatic hydrocarbon with 4-5 carbon atoms (abstract and col. 5, lines 20-26), as pertaining to claims 7 and 21-23, and 25, 0.01-14% post-foaming agent present (col. 5, lines 20-26, col. 9, example 1, and col. 10, lines 55-57), as claimed in claims 8 and 26-28, and 30-31, sodium lauryl ether sulphate (SLS) (col. 4, lines 22-30), as claimed in claim 32, alkali metal alkyl ether sulfates (col. 10, examples 3 and 4), as claimed in claim 33, and iso-pentane (col. 5, lines 26), as claimed in claim 34.

***Ascertainment of the Difference between Scope the Prior Art and the Claims
(MPEP §2141.012)***

Dawson et al. do not teach said formulations stable for 12 months at 25° C or below as claimed in claim 9. However, Dawson et al. do teach stable compositions (abstract and col. 3, lines 24-26).

Dawson et al. do not teach that said components are mixed in pipe work absent at least 80psi for each embodiment as claimed in claims 36, 37, and 39. However, Dawson et al. do teach that said mixtures may be produced and remain in liquid state for up to 24 hours before gelling.

Dawson et al. do not teach an amphoteric surfactant or cocamidopropyl betaine as said surfactant as pertaining to claims 5, 9, 14, and 38. This deficiency in Dawson

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et al. is cured by Hall et al. Hall et al. teach the utilization of amphoteric surfactants in post-foaming gel compositions (page 7, line(s) 8-17).

Dawson et al. do not teach a method wherein said un-gelled compositions are piped through pipe work without a pressure of 80psi or greater as pertaining to claims 37 and 39. This deficiency in Dawson et al. is cured by Anderson et al. and Sisbarro. Anderson et al. teach packaging delayed forming gels and that said packaging may have problems due to high viscosity of said gel (col.1, lines15-61), and that said gel composition is mixed, in liquid form, in pipe work, added to a final container, and sealed prior to formation of said gel (col. 4, line 62 to col. 5, line 19, and claim 1). Further, Sisbarro teach that a pressure of 30-50psi is required to move low viscosity liquid gels through plant pipe work (col. 6, lines 6-27).

Finding of Prima Facie Obviousness Rational and Motivation

(MPEP §2142-2143)

Regarding claim 9, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Dawson et al. with the property of remaining stable for at least 12 months under certain conditions.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. teach said formulations as stable and one would have wanted such a consumer product to remain stable for at least 12 months to account for shipping time as well as time spent on the store shelves or being stored/utilized by a consumer.

Therefore it would have been obvious to optimize the formulations of Dawson et al. to

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remain stable for at least 12 months, in order to provide a product with sufficient shelf life.

Further regarding claim 9, it would also be expected that compositions comprising of the same components in the same amounts would remain stable for the same amount of time when stored under the same conditions. The Office does not have the facilities capable of testing the length of time that the compositions disclosed by Dawson et al. will remain stable, therefore the burden has been shifted away from the office and it is now incumbent upon Applicant to show that the compositions disclosed in Dawson et al. would not remain stable.

Further regarding claims 9 and 10, Dawson et al. teach that the gel may be formed anytime from immediately after addition of said agent to 24 hours later. It is reasonable to state that one of ordinary skill would have known that manufacture and packaging of said formulations is easier when said formulation is in liquid form, not gel form, and knowing that the gel formation could be timed for up to 24 hours after addition of said gelling agent one could have timed such formation for after all processing was completed and said formulation was packaged, which could be 4 minutes or greater. The limitation of said formulation being **only** formed at least 4 minutes after the addition does not overcome Dawson et al. because Dawson et al. still teach that the gelling time is flexible, and in the timeline of immediately to 24 hours, a majority of said range is at least 4 minutes.

Further regarding claim 9, Dawson et al. teach both, said formulations piped into storage containers prior to gelling and said formulations mixed and formed in the final

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container. The art clearly teaches embodiments wherein said formulations are dispensed into containers prior to gelling, one embodiment in final aerosol containers and another into larger storage containers, which could be sold as final containers for industrial purposes.

Regarding claim 35, the viscosity and therefore the gel rigidity of said formulations would necessarily increase after said formulations were dispensed into containers and allowed to stand. Dawson et al. teach gelling after said formulations are dispensed into containers and a liquid composition would necessarily have a lower viscosity and gel rigidity than a gel composition of the same components.

Regarding claims 36, 37, and 39 it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to mix said gel composition components within said pipe work without elevated pressure before dispensing said mixture to a final container in order to produce the invention of instant claims 36 and 37.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. teach that said components may be mixed and remain in liquid state for up to 24 hours before gelling occurs. Therefore it would have been obvious to mix said components within pipe work prior to dispensing said mixture to a final container in order to have only one pipe dispensing liquid to a container rather than several pipes.

Regarding the container limitations of claims 9 and 38, the container teachings of Dawson et al. read on said limitations (col. 9, lines 11-19).

Regarding claims 5 and 14-16, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of

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Dawson et al. with an amphoteric surfactant as taught by Hall et al. in order to produce the invention of instant claims 5 and 14-16.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. and Hall et al. are analogous art, teach to similar compositions, and Hall et al. teach that such compositions may comprise a mixture of surfactants, including amphoteric surfactants. Therefore it would have been obvious to utilize the amphoteric surfactants of Hall et al., within the post-foaming gel compositions of Dawson et al. in order to impart the properties and feel of an amphoteric surfactant onto said formulations.

Regarding the limitation of said gel forming after packaging into a final container, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to package the compositions of Dawson et al. with the methods of Anderson et al. in order to produce the invention of instant claims 1-14 and 17-39.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. and Anderson et al. both teach to post foaming gel compositions and methods of packaging and Anderson et al. teach that gelling in pipe work can cause problems. Therefore it would have been obvious to utilize the packaging methods of Anderson et al, with the formulations of Dawson et al. in order to avoid gelling within said pipe work.

Regarding the limitations to an elevated pressure, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to practice the

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methods of Anderson et al. with 30-50psi as taught by Sisbarro in order to produce the invention of instant claims 1-14 and 17-39.

One of ordinary skill in the art would have been motivated to do this because Anderson et al. teach a liquid formulation pumped through pipe work and Sisbarro teaches similar formulations, in low viscosity gel form, requiring 30-50psi to move said compositions through said pipe work. Therefore it would have been obvious to utilize 30-50psi as taught by Sisbarro, with the methods of Anderson et al. in order to utilize a pressure known to move low viscosity compositions through pipe work. It is noted by the examiner that the partially gelled formulations of Sisbarro would have a higher viscosity than the liquid formulations of either Anderson et al. or Dawson et al. and therefore would require a higher pressure to move said compositions through pipe work that the later references formulations would require.

Regarding the container limitations of claims 9 and 38, the container teachings of Dawson et al. read on said limitations (col. 9, lines 11-19).

Regarding the limitation of said gel forming after packaging into a final container, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to package the compositions of Dawson et al. with the methods of Anderson et al. in order to produce the invention of instant claims 1-39.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. and Anderson et al. both teach to post foaming gel compositions and methods of packaging and Anderson et al. teach that gelling in pipe work can cause problems. Therefore it would have been obvious to utilize the packaging methods of

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Anderson et al, with the formulations of Dawson et al. in order to avoid gelling within said pipe work.

Regarding the limitations to an elevated pressure, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to practice the methods of Anderson et al. with 30-50psi as taught by Sisbarro in order to produce the invention of instant claims 1-39.

One of ordinary skill in the art would have been motivated to do this because Anderson et al. teach a liquid formulation pumped through pipe work and Sisbarro teaches similar formulations, in low viscosity gel form, requiring 30-50psi to move said compositions through said pipe work. Therefore it would have been obvious to utilize 30-50psi as taught by Sisbarro, with the methods of Anderson et al. in order to utilize a pressure known to move low viscosity compositions through pipe work. It is noted by the examiner that the partially gelled formulations of Sisbarro would have a higher viscosity than the liquid formulations of either Anderson et al. or Dawson et al. and therefore would require a higher pressure to move said compositions through pipe work that the later references formulations would require.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Double Patenting

Claims 2-4 and 9 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 9 of copending Application No. 10/824,202.

This is a provisional obviousness-type double patenting rejection.

Dawson et al. '202 claims a method for manufacture of a composition comprising, adding a non-ionic gelling agent to an anionic surfactant at a ratio of 1:4 or less, combining said mixture with a post-foaming agent, and filling said mixture into a container prior to gel formation, wherein the gel rigidity remains unchanged for at least 4 minutes. '202 also claim a list of different gelling agents and a percentage thereof.

Dawson et al. '202 do not teach the said compositions remaining stable for at least 12 months at a specified temperature.

It would also be expected that compositions comprising of the same components in the same amounts would remain stable for the same amount of time when stored under the same conditions. The Office does not have the facilities capable of testing the length of time that the compositions disclosed by Dawson et al. '202 will remain stable, therefore the burden has been shifted away from the office and it is now incumbent upon Applicant to show that the compositions disclosed in Dawson et al. would not remain stable.

Response to Arguments

Applicant's arguments filed 9/01/2010 have been fully considered but they are not persuasive.

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Dawson et al. give no evidence or examples of how to delay said gelling or that such a composition had been produced.

This argument is not found persuasive because Dawson et al. is not required to provide examples for every embodiment, and Dawson et al. said foaming is affected by the formulation itself, which one of ordinary skill in the art would understand to be modification of the components such as surfactant and post-foaming agent.

Applicant also argues that Dawson et al. do not teach how to delay gelling or to alter said gelling timeline.

This argument is not found persuasive because Dawson et al. teach adding said components and shaking to form said gel and one can clearly see that the delay comes from waiting to shake said composition. Further, it would be routine experimentation to alter the percentages of said components to determine to exact methods of delaying said gel formation and one of ordinary skill would likely determine said delay was based on the percentages of the components affecting said gel, including the surfactant and post-foaming agent. It is noted that applicant does not provide any discussion as to how to alter said delay and only provides a theory as to what affects said delay.

Applicant also argues that Dawson et al. do not teach an amphoteric surfactant and that said amphoteric surfactant in combination with a non-ionic gelling agent is 'theorized' to be responsible for said delayed gelling.

Applicant only theorizes that said combination is responsible for said delay and has provided no evidence nor have they show any criticality of said components or their percentages, especially with regard to the use of an amphoteric surfactant. Dawson et al. teach the same non-ionic gelling agent and the use of a surfactant system and that said compositions may affect gelling for up to 24 hours. It is common in the art to use different surfactants as well as surfactant systems and it would have been obvious to produce the Dawson et al. compositions with the amphoteric surfactants of Hall et al. The Dawson et al. and Hall et al. combination renders the instant compositions obvious especially in light of the lack of a showing of criticality.

Applicant also argues that there is no motivation to combine the teachings of Dawson et al. and Hall et al.

This argument is not found persuasive because both references teach post-foaming cleansing compositions. One desiring to produce such a composition would reasonably read both of said references and combine their teachings.

Applicant also argues that Hall et al. addresses a different problem than that of the instant invention.

This argument is not found persuasive because Hall et al. is not required to address the same problem to be solved in order to be used as prior art in order to render the claimed compositions as obvious.

Applicant also argues that the compositions of Hall et al. are in gel form prior to packaging and one of skill would not consult said reference when formulating a delayed gelling composition.

This argument is not found persuasive because Dawson et al. teach said formulations may have a delayed gelling for up to 24 hours. Further, one would look to Hall et al. for a teaching of common components and percentages thereof used in similar formulations.

Applicant also argues that neither Anderson nor Sisbarro teach delayed gelling of at least 4 minutes.

This argument is not found persuasive because Dawson et al. is used to teach said delay in gel formation.

Conclusion

Claims 1-14 and 17-39 are rejected.

No claims are allowed.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUKE E. KARPINSKI whose telephone number is (571)270-3501. The examiner can normally be reached on Monday Friday 9-5 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on 571-272-0646. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LEK

/Mina Haghighatian/
Primary Examiner, Art Unit 1616